



# SUPPORT

## Consumer Credit Fairness Act

March 23, 2015  
A.4438-Weinstein

MFY Legal Services, Inc. (MFY) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We serve more than 10,000 New Yorkers each year. MFY's Consumer Rights Project provides advice, counsel, and representation to low-income New Yorkers on a range of consumer problems. MFY, a member of New Yorkers for Responsible Lending (NYRL), strongly supports A.4438, also known as the Consumer Credit Fairness Act, because it would help alleviate the established problem of abusive debt collection lawsuits, which have become an epidemic in New York State.

During the past decade, hundreds of thousands of debt collection lawsuits have been filed against low- and moderate-income New Yorkers. Most of these lawsuits are brought by third-party debt buyers, companies that buy portfolios of old, defaulted debts from original creditors for pennies on the dollar. Debt collection lawsuits can be abusive for numerous reasons. Many of the debts are in fact **too old to be sued on, have already been paid or discharged in bankruptcy, result from identity theft or mistaken identity, or arise as a result of economic abuse in the context of domestic abuse**. Even in cases where the consumer may owe some money, debt buyers often **sue for grossly inflated amounts**, padding the debts with unauthorized fees and interest. Most of the time, defendants **do not even receive notice** that they have been sued. Without notice, they do not appear in court, and debt buyers obtain "default" judgments. In 2013 the Federal Trade Commission released a report on nine of the country's largest debt buyers, all of which file debt collection lawsuits in New York State.<sup>1</sup> The FTC found that these debt buyers received very little documentation about the debts they purchase, and that these debt buyers rarely received any information concerning whether a person had disputed the debt.

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<sup>1</sup> Available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

The consequences of the default judgments can be devastating. Debt buyers enforce judgments by **freezing people's bank accounts and garnishing their wages**, leaving low- and moderate-income New Yorkers and their families unable to pay for their basic needs, including housing, food, or medication. These judgments appear on people's credit reports, making it difficult, if not impossible, for them to find housing, obtain employment, take out a loan, or accumulate any savings. The harm is exacerbated for victims of domestic abuse, who are often desperate to secure employment and housing to avoid having to return to their abusers, and prevents them from maintaining economic self-sufficiency. The consequences of a judgment are especially disturbing when a person has had no prior notice that he or she was being sued.

The Office of Court Administration (OCA) recently implemented new rules for debt collectors<sup>2</sup> to address exploitive debt collection practices, including rampant robo-signing of fraudulent affidavits, and the fact that collectors often have little to no documentation about the debts upon which they sue. The OCA rules will help protect the due process rights of New Yorkers by ensuring that more people receive notice that they have been sued and that creditors and debt buyers cannot obtain default judgments without adequate proof of their claims. A.4438 would codify key parts of these rules, and would also implement other much-needed changes that cannot be addressed by court rules, including requiring that key information be included at the time that collection cases are filed, reducing the statute of limitations in consumer debt cases, and protecting the rights of consumers who are not served properly by extending the period of time to challenge service.

A.4438, combined with the new OCA rules, would prevent debt buyers from continuing to exploit gaps in our state's Civil Practice Law and Rules, while allowing legitimate cases to proceed. By adopting statewide an additional notice provision consistent with the OCA rule, A.4438 protects consumers by ensuring a greater level of notice when they are being sued for a debt. By requiring court papers to include more information about the debt sued upon, it helps New York consumers better identify the debt or account on which they are being sued at the outset of the case. This is particularly helpful for victims of domestic violence who are often sued on debts they did not voluntarily or knowingly incur.

Finally, reducing the statute of limitations for all consumer credit transactions to three years from six, and eliminating the right to collect the debt once the statute of limitations is expired, encourages creditors to file claims in a timely manner and better protects low- and moderate-income consumers from the excessive accumulation of interest charges and late fees. It would also bring New York in line with applicable statutes of limitation in states where the major credit card issuers do business, promoting fairness and uniformity in the court process. In 2010, New York's highest court (*Portfolio Recovery Assoc. v. King*, 14 NY3d 410 (2010)) confirmed that a three-year statute of limitations applies to most of the debt collection lawsuits filed in New York courts, because four of the country's largest credit card issuers – Chase, Bank of America, Discover, and Capital One – are located in states with three-year statutes of limitations. Every year, New Yorkers are sued on debts that are beyond the statute of limitations, as evidenced by

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<sup>2</sup> Available at: <http://www.nycourts.gov/rules/ccr/>.

the recent settlement between New York State Attorney General Schneiderman and Encore Capital Group, a major debt buyer that obtained thousands of judgments against New Yorkers on stale debts. Unfortunately, because most people sued have no access to legal counsel, they are unaware that they can raise a statute of limitations defense. A.4438 would promote fairness by providing for a consistent statute of limitations in debt collection lawsuits and would conserve judicial resources by sparing the courts from having to engage in a fact-intensive inquiry in each case to determine the original creditor's home state.

**MFY Legal Services supports swift passage of A.4438, which will codify many of the provisions found in the OCA rules and greatly reduce the number of unfair and abusive debt collection lawsuits that clog the courts, which are particularly harmful to domestic abuse survivors, and disabled, elderly, and low- and moderate-income New Yorkers.**

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